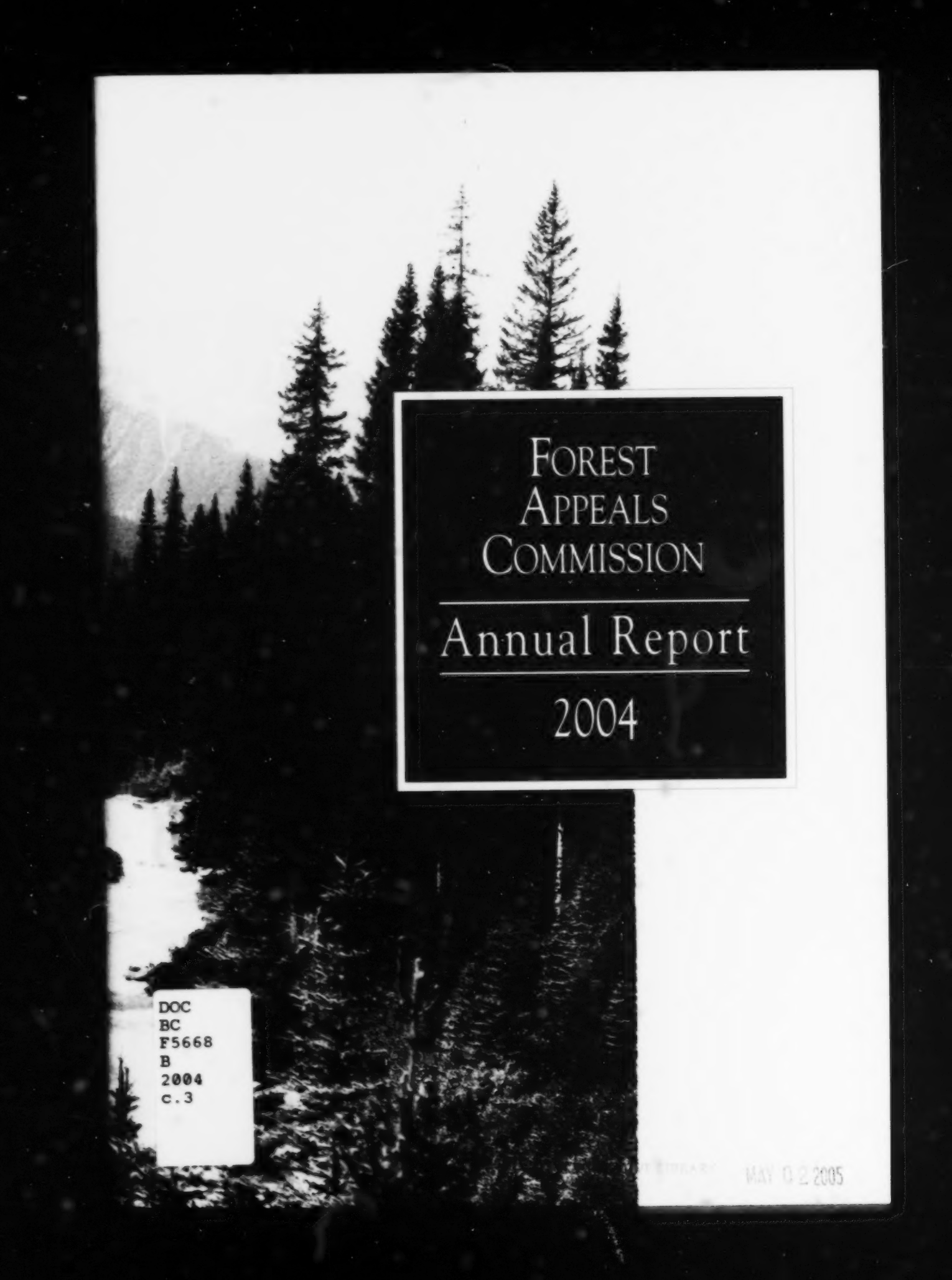

Forest Appeals Commission

Annual Report

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Honourable Bill Barisoff
Minister of Water, Land and Air Protection
Parliament Buildings
Victoria, British Columbia
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Honourable Richard Neufeld
Minister of Energy and Mines
Parliament Buildings
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Dear Ministers:

I respectfully submit herewith the annual report of the Forest Appeals Commission for the period January 1, 2004 to December 31, 2004.

Yours truly,

Alan Andison
Chair
Forest Appeals Commission

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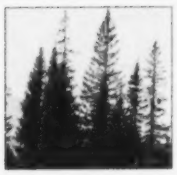
Table of Contents

Message from the Chair	4
Introduction	5
The Commission	7
Commission Membership	7
Administrative Law	8
The Commission Office	8
Commission Resources	8
Policy on Freedom of Information and Protection of Privacy	8
The Appeal Process	9
Appeals under the *Forest Practices Code of British Columbia Act*	9
Appeals under the *Forest and Range Practices Act*	10
Appeals under the *Forest Act*	11
Appeals under the *Range Act*	11
Appeals under the *Private Managed Forest Land Act*	11
Commencing an Appeal	12
Written Hearing Procedure	13
Oral Hearing Procedure	13
The Hearing	15
The Decision	15
Legislative Amendments Affecting the Commission	16
Forest Practices Code of British Columbia Act and *Forest and Range Practices Act*	16
Forest Act	17
Range Act	17
Private Managed Forest Land Act	18
Wildfire Act	18
Evaluation and Recommendations	19
Statistics	20
Summaries of Decisions	21
Appeals of Decisions	30
APPENDIX I	31
Forest Practices Code of British Columbia Act	31
Forest and Range Practices Act	35
Forest Act	38
Range Act	41
Administrative Review and Appeal Procedure Regulation (B.C. Reg. 12/04)	42
Private Managed Forest Land Act	46
Private Managed Forest Land Regulation (B.C. Reg. 371/04)	47



Message from the Chair

I am pleased to submit the tenth Annual Report of the Forest Appeals Commission.

The membership of the Forest Appeals Commission changed in 2004 with the addition of David Searle. Mr. Searle was also appointed to the Environmental Appeal Board.

During 2004, some of the changes to forest legislation, which had been previously announced by the government, came into force. The *Forest and Range Practices Act* came into force in January of 2004, and will eventually replace the *Forest Practices Code of British Columbia Act* (the "*Code*") when it is completely phased out in 2005. This Act incorporates many of the Commission's powers and procedures that are set out in the *Code*. The *Private Managed Forest Land Act* also came into force during the 2004 reporting period. Section 33 of that Act creates a right of appeal to the Commission for persons who are subject to certain orders, decisions or determinations of the Private Managed Forest Land Council. The Commission will also have the jurisdiction to hear appeals under the *Wildfire Act*, which received royal assent on April 29, 2004. This Act creates a right of appeal to the Commission for the Forest Practices Board and for persons who are subject to certain orders or decisions. This Act will come into force in 2005.

This year, the office that provides the financial and administrative support for both the Commission and the Environmental Appeal Board was expanded. Two additional tribunals now share the Commission's office and administrative staff: the Community Care and Assisted Living Appeal Board and the Hospital Appeal Board. These tribunals have different Chairs and operate independently of the Commission, while taking advantage of the cost effectiveness of sharing an office and its administrative staff.

Introduction

The Forest Appeals Commission is an independent tribunal that was established under the *Code*, which came into effect on June 15, 1995, and has been continued under the new *Forest and Range Practices Act*.

This is the tenth Annual Report of the Forest Appeals Commission. The information contained in this report covers the twelve-month period from January 1, 2004 to December 31, 2004.

This report describes the structure and function of the Commission and how the appeal process operates. This report also contains:

- the number of appeals initiated during the report period;
- the number of appeals completed during the report period (i.e., final decisions issued);
- the resources used in hearing the appeals;
- a summary of the results of appeals completed in the report period;
- an evaluation of the review and appeal processes; and,
- recommendations for amendments to all of the forest legislation, from which it hears appeals.

Finally, summaries of the decisions made by the Commission during the report period are provided, legislative amendments affecting the Commission are described, and the relevant sections of the applicable legislation are reproduced.

Decisions of the Commission are available for viewing at the Forest Appeals Commission office, on the Commission's website, and at the following libraries:

- Legislative Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Courthouse Library Society
- West Coast Environmental Law Association Law Library

Detailed information on the Commission's policies and procedures can be found in the Forest Appeals Commission Procedure Manual, which may be obtained from the Commission office or viewed on the Commission's website. If you have questions, or would like additional copies of this report, please contact the Commission office. The Commission can be reached at:

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Victoria, British Columbia V8W 9V1

The Commission

The Forest Appeals Commission is an independent agency, which provides a forum to appeal certain decisions made by government officials under the *Code*, the *Forest Act*, the *Forest and Range Practices Act*, the *Private Managed Forest Land Act*, and the *Range Act*. The Commission is also responsible for providing the Lieutenant Governor in Council (Cabinet) with an annual evaluation of the appeal and review processes, and with recommendations for amendments to some of the forest legislation and regulations respecting reviews and appeals.

Commission Membership

The Commission members are appointed by the Lieutenant Governor in Council (Cabinet) for a term of up to three years. The members are drawn from across the Province, representing diverse business and technical experience, and have a wide variety of perspectives. Commission membership consists of a full-time chair, a part-time vice-chair and a number of part-time members. Appointments to the Commission are subject to the terms and conditions set out in the *Administrative Tribunals Appointment and Administration Act*, S.B.C. 2003, c. 47.

For this report period the Commission consisted of the following members:

MEMBER	FROM
Chair	
Alan Andison	Victoria
Vice-chair	
David Ormerod	Victoria
Members	
Sean Brophy	North Vancouver
Robert Cameron	North Vancouver
Richard Cannings	Naramata
Don Cummings	Penticton
Cindy Derkaz	Salmon Arm
Bruce Devitt	Victoria
Margaret Eriksson	New Westminster
Bob Gerath	North Vancouver
R.A. (Al) Gorley	Victoria
James Hackett	Nanaimo
Lynne Huestis	North Vancouver
Katherine Lewis	Prince George
Paul Love	Campbell River
Gary Robinson	Victoria
David Searle (from November 1, 2004)	Vancouver
Lorraine Shore	Vancouver
David J. Thomas	Victoria
Robert J. Wickett	Vancouver
Stephen V.H. Willett	Kamloops
Phillip Wong	Vancouver
J.A. (Alex) Wood	North Vancouver

Administrative Law

Administrative law is the law that governs public officials and tribunals who make decisions that affect the rights and interests of people. Administrative law applies to the decisions and actions of statutory decision-makers or people who exercise power derived from legislation. The goal is to ensure that officials make their decisions in accordance with the principles of procedural fairness/ natural justice by following proper procedures and acting within their jurisdiction.

The Commission is governed by the principles of administrative law and, as such, must treat all of the parties involved in a hearing fairly, giving each party a chance to explain its position.

Appeals to the Commission are decided on a case-by-case basis. Unlike a court, the Commission is not bound by its previous decisions; present cases of the Commission do not necessarily have to be decided in the same way that previous ones were.

The Commission Office

The office provides registry services, legal advice, research support, systems support, financial and administrative services, training, and communications support for the Commission.

The Commission shares its staff and its office space with the Environmental Appeal Board and, as of December 2004, two additional tribunals: the Community Care and Assisted Living Appeal Board and the Hospital Appeal Board.

Each of the tribunals operates independently of one another. Supporting four tribunals through one administrative office gives each tribunal access to resources while, at the same time, cutting down on administration and operation costs. In this way, expertise can be shared, and work can be done more efficiently.

Commission Resources

The fiscal 2004/2005 budget for the Forest Appeals Commission was $332,000.

The fiscal 2004/2005 budget for the shared office and staff was $1,153,000.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Commission by one party must also be provided to all other parties to the appeal.

The Commission is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If information is requested by a member of the public regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*.

Parties to appeals should be aware that information supplied to the Commission will be subject to public scrutiny and review.

The Appeal Process

Appeals under the *Forest Practices Code of British Columbia Act*

The *Forest and Range Practices Amendment Act*, 2003, S.B.C. 2003, c. 55 was brought into force by regulation on January 31, 2004, and amends the *Code*. Section 92 of the *Amendment Act* repealed several sections of the *Code*, including sections 127 and 128.

Prior to the amendments, the determinations that could be appealed under the *Code* were set out in sections 127 and 128, and included the following:

- the approval of an operational plan or an amendment;
- orders to abate or remove a fire hazard;
- determinations regarding fire control or suppression;
- orders regarding unauthorized construction or occupation of a building in a Provincial forest;
- orders regarding the unauthorized storage of hay on a Crown range, or range development;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;
- orders relating to the control of insects, disease, etc.;
- penalties for contravention of the *Code*, regulations, standards or an operational plan;
- remediation orders and stopwork orders; and,
- notices of determination that a person contributed to fire.

Determinations could not be appealed to the Commission unless a reviewer first reviewed them. The review and appeal of certain specified determinations could be initiated by the Forest Practices Board or by a person subject to the determination, or both.

After the amendments to the *Code*, and for the majority of the reporting period, all determinations that could be appealed under the *Code* were set out in sections 82 and 95(2) of the *Code*, and include:

- orders to abate or remove a fire hazard;
- determinations regarding fire control or suppression;
- a determination that a person or that person's employee contributed to fire.

Following the amendments, reviews must be conducted at the request of the person subject to a determination under sections 82 and 95(2) of the *Code*. The Forest Practices Board may also require a review if it receives consent from the person who is the subject of the determination. Either the determination, or a decision made after

completion of a review of the determination, may be appealed to the Commission by the Forest Practices Board or by a person subject to the determination.

Appeals under the *Forest and Range Practices Act*

The *Forest and Range Practices Act* was brought into force by regulation on January 31, 2004. The *Forest and Range Practices Act* states that the Commission is continued under section 194 of the *Code*, and it incorporates many of the powers and procedures set out in the *Code*.

The formal requirements of the appeal process for appeals under the *Forest and Range Practices Act* are set out in Part 6 of the that Act, in Part 6 of the *Code*, and in Part 3 of the *Administrative Review and Appeal Procedure Regulation*. Appealable decisions under the *Forest and Range Practices Act*, other than a determination under section 77.1, are set out in sections 80 and 81 of that Act. These include the following:

- approval of a forest stewardship plan, woodlot licence plan or an amendment;
- authorizations regarding range stewardship plans;
- approvals, orders, and determinations regarding range use plans, range stewardship plans or an amendment;
- suspensions and cancellations regarding forest stewardship plans, woodlot licence plans, range use plans or range stewardship plans, and permits under this Act;
- orders regarding range developments;
- orders relating to the control of insects, disease, etc.;
- orders regarding unauthorized construction or occupation of a building on Crown land in a Provincial forest;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;
- determinations regarding administrative penalties;
- remediation orders and stopwork orders;
- orders regarding forest health emergencies;
- orders relating to the general intervention power of the minister;
- orders regarding declarations limiting liability of persons to government;
- relief granted to a person with an obligation under this Act, the regulations, standards or operational plan;
- conditions imposed in respect of an order, exemption, consent or approval; and,
- exemptions, conditions, and alternative requirements regarding roads and rights of way.

Reviews must be conducted at the request of the person subject to certain determinations listed under the *Forest and Range Practices Act*. The Forest Practices Board may also require a review of specified determinations listed under the *Forest and Range Practices Act*, if it receives consent from the person who is the subject of the determination. Either the determination, or a decision made after completion of a review of the determination, may be appealed to the Commission by the Forest Practices Board or by a person subject to the determination.

Appeals under the *Forest Act*

Appealable decisions under the *Forest Act* are set out in section 146 of that Act and include certain determinations, orders and decisions made by district or regional managers, timber sales managers, employees of the Ministry of Forests, and the Chief Forester. Appealable decisions include matters such as the determination of stumpage and the suspension of rights under a licence or agreement.

Certain decisions of the Chief Forester or an employee of the Ministry of Forests may be appealed to the Commission without prior review. However, determinations, orders or decisions made by a district or regional manager, or timber sales manager, must be reviewed by a reviewer before they may be appealed. If the person who is subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Appeals under the *Range Act*

The following determinations, orders and decisions under the *Range Act* are appealable to the Commission:

- determinations, orders and decisions by a forest officer or district manager relating to the suspension of all or some of the rights granted under a licence or permit;
- determinations, orders and decisions by a district manager relating to the reinstatement of suspended rights; and,
- determinations, orders and decisions by a district manager relating to the cancellation of suspended rights or the cancellation of a licence or permit where rights were under suspension.

These determinations, orders or decisions cannot be appealed to the Commission unless they have first been reviewed by a reviewer. If the person subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Appeals under the *Private Managed Forest Land Act*

Since August 3, 2004, the Commission has been given jurisdiction to hear appeals from certain decisions made under the *Private Managed Forest Land Act*. The formal requirements for appeals under the *Private Managed Forest Land Act* are set out in section 33 of that Act. That section creates a right of appeal to the Commission for persons who are subject to certain orders, decisions or determinations of the Private Managed Forest Land Council, and include the following:

- determinations regarding penalties and remediation orders;
- determinations regarding contraventions of this Act or the regulations;
- stop work orders;
- notifications to the assessor regarding contraventions; and,
- requests of the council to rescind or vary orders, decisions or determinations.

Commencing an Appeal

Notice of Appeal

For appeals under the *Code*, the *Forest Act*, the *Forest and Range Practices Act*, and the *Range Act*, a notice of appeal must comply with the content requirements of the *Administrative Review and Appeal Procedure Regulation*. Procedures for filing an appeal under the *Private Managed Forest Land Act* are set out under the *Private Managed Forest Land Regulation*.

For all appeals, an appellant must prepare a Notice of Appeal and deliver it to the Forest Appeals Commission office within the time limit specified in the relevant statute. The Notice of Appeal must contain the name and address of the appellant, the name of the person, if any, making the request on the appellant's behalf, the address for giving a document to, or serving a document on the appellant, the reasons why the appellant objects to the determination or review decision (the grounds for appeal), the type of order the appellant is seeking from the Commission, and the signature of the appellant or the person making the request on the appellant's behalf. Additionally, a copy of the determination, order, decision, or the reviewed or corrected order, must be included along with the Notice of Appeal.

Generally, if the Commission does not receive the Notice of Appeal within the specified time limit, the appellant will lose the right to appeal. However, the Chair, or a member of the Commission, may extend the statutory time period for filing an appeal either before or after the time limit expires.

If the Notice of Appeal is missing any of the required information, the Commission will notify the appellant of the deficiencies. The Commission may refrain from taking any action on an appeal until the Notice is complete and any deficiencies are corrected.

Once a Notice of Appeal is accepted as complete, the Commission will notify the office of the official who made the original decision, or the review decision being appealed. A representative of the Government of British Columbia, or the Private Managed Forest Land Council if it is an appeal under the *Private Managed Forest Land Act*, will be the respondent in the appeal.

Third Party Status

The *Code* provides that, at any stage of an appeal, the Commission may grant third party status to a person who may be affected by the appeal. That provision applies to appeals under the *Code*, and the *Forest and Range Practices Act*. Also under those enactments, if the Forest Practices Board is not an appellant, the Commission will add the Board as a party to the appeal at the Board's request.

The *Forest Act* and the *Range Act* provide that only the appellant and the government are parties to appeals under those Acts.

For appeals under the *Private Managed Forest Land Act*, the Commission may grant third party status to a person who may be directly affected by the appeal.

Intervenors

The *Code* enables the Commission to invite or permit a person to participate in a hearing of an appeal under the *Code* and the *Forest and Range and Practices Act* as an intervenor.

Under the *Private Managed Forest Land Act*, the Commission may invite or permit any person who may be materially affected by the outcome of an appeal to take part in the appeal as an intervenor.

In all cases, an intervenor may participate in a hearing to the extent that the Commission allows.

The *Forest Act* and the *Range Act* do not provide for intervenor participation.

Type of Hearing

The Commission has the authority to conduct a new hearing on a matter before it.

An appeal may be conducted by way of written submissions, oral hearing or a combination of both. In most cases, the Commission will conduct an oral hearing. However, in some instances the Commission may find it appropriate to order a hearing to proceed by way of written submissions.

Prior to ordering that a hearing be conducted by way of written submissions, the Commission may request input from the parties.

As of December 3, 2004, the Commission is no longer required to hold a hearing of an appeal under the *Forest Act* and the *Range Act* within 45 days of the date the Commission receives the Notice of Appeal. This requirement was repealed.

Written Hearing Procedure

If it is determined that the hearing will be by way of written submissions, the Commission will invite all parties and intervenors to provide submissions. The appellant will provide its submissions, including its evidence, first. The other parties will have an opportunity to respond to the appellant's submissions when making their own submissions, and to present their own evidence.

The appellant is then given an opportunity to comment on the submissions and evidence provided by the other parties.

Finally, all parties will be given the opportunity to provide closing submissions. Closing submissions should not contain new evidence.

Oral Hearing Procedure

The *Administrative Review and Appeal Procedure Regulation* requires the Commission to, within 30 days of receiving and accepting an appeal, determine which members will hear the appeal. At that time, the Commission must also set the date, time and location of the hearing. This requirement does not apply to appeals under the *Private Managed Forest Land Act*.

For all appeals, once the date for a hearing is set, the parties involved will be notified. If any of the parties to the appeal cannot attend the hearing on the date scheduled, a request may be made to the Commission to change the date.

An oral hearing may be held in the locale closest to the affected parties, at the Commission office in Victoria or anywhere in the province. The Commission will decide where the hearing will take place on a case-by-case basis.

Once a hearing is scheduled, the parties will be asked to provide a Statement of Points to the Commission.

Statement of Points

To help identify the main issues to be addressed in an oral hearing, and the arguments that will be presented in support of those issues, all parties to the appeal are requested to provide the Commission, and each of the parties to the appeal, with a written Statement of Points and all relevant documents.

The Commission requires that the appellant submit its Statement of Points and documents at least 30 days prior to the commencement of the hearing. The respondent (the Government or the Council) and all other parties are required to submit their Statements of Points and documents at least 15 days prior to the commencement of the hearing. Each party is to ensure that the Commission, and all

other parties to the appeal, receive a copy of their Statement of Points and documents within the set time frames.

The Statement of Points is, essentially, a summary of each party's case. As such, the content of each party's Statement of Points will depend on whether the party is appealing the decision or attempting to uphold the decision being appealed.

The Commission asks that the following information be contained in the respective party's Statement of Points:

(a) The appellant should outline:
    (i) the substance of the appellant's objections to the decision of the respondent;
    (ii) the arguments which the appellant will present at the hearing;
    (iii) any legal authority or precedent supporting the appellant's position; and,
    (iv) the names of the people the appellant intends to call as witnesses at the hearing.
(b) The respondent should outline:
    (i) the substance of the respondent's objections to the appeal;
    (ii) the arguments which the respondent will present at the hearing;
    (iii) any legal authority or precedent supporting the respondent's position; and,
    (iv) the names of the people the respondent intends to call as witnesses at the hearing.

Additional hearing participants that are granted party status or intervenor status are also asked to provide a Statement of Points outlining the above-noted points as may be relevant to that party.

Where a party has not provided the Commission with a Statement of Points by the specified date, the Commission has the authority to order the party to do so.

Pre-hearing Conference

Either before or after the Statements of Points and relevant documents have been exchanged, the Commission, or any of the parties, may request a pre-hearing conference.

Pre-hearing conferences provide an opportunity for the parties to discuss any procedural issues or problems, to resolve the issues between the parties, and to deal with any preliminary concerns.

A pre-hearing conference will normally involve the spokespersons for the parties, one Commission member and one staff member from the Commission office. It will be less formal than a hearing and will usually follow an agenda, which is set by the participants. The parties are given an opportunity to resolve the issues themselves giving them more control over the process.

If all of the issues in the appeal are resolved, there will be no need for a full hearing. Conversely, it may be that nothing will be agreed upon or some issues still remain and the appeal will proceed to a hearing.

Disclosure of Expert Evidence

The Commission is not bound by the provisions relating to expert evidence in the British Columbia *Evidence Act*. However, the Commission does require that reasonable advance notice of expert evidence be given and that the notice include a brief statement of the expert's qualifications and areas of expertise, the opinion to be given at the hearing, and the facts on which the opinion is based.

Summons

The Commission has the power to summon witnesses to give evidence at a hearing and bring documents related to the hearing.

If a party wants to ensure that an important witness attend the hearing, the party may ask the Commission to issue a summons. The request must be in writing and explain why the summons is required.

The Hearing

A hearing is a more formal process than a pre-hearing conference, and allows the Commission to receive the evidence it uses in making a decision.

In an oral hearing, each party will have a chance to present evidence. Each party will have an opportunity to call witnesses and explain its case to the Commission.

Although hearings before the Commission are less formal than those before a court, some of the hearing procedures are similar to those of a court: witnesses give evidence under oath or affirmation and witnesses are subject to cross-examination.

Parties to the appeal may have lawyers representing them at the hearing but this is not required. The Commission will make every effort to keep the process open and accessible to parties not represented by a lawyer.

All hearings before the Commission are open to the public.

Rules of Evidence

The rules of evidence used in a hearing are less formal than those used in a court. The Commission has full discretion to receive any information it considers relevant and then will determine what weight to give the evidence.

The Decision

In making its decision, the Commission is required to determine, on a balance of probabilities, what occurred, and to decide between the rights of the parties.

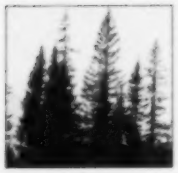
The Commission will not normally make a decision at the end of the hearing. Instead, in the case of both an oral and a written hearing, the final decision will be given in writing within a reasonable time following the hearing. Copies of the decision will be given to the parties, the intervenors, and the appropriate minister(s). In an appeal under the *Forest Act* or the *Range Act*, the Commission is required to serve its decision on the parties within 42 days after the conclusion of the hearing.

If a party disagrees with the decision of the Commission, that party may appeal the decision to the British Columbia Supreme Court. This appeal must be made within 3 weeks of being served with the Commission's decision. A party may only appeal the Commission's decision on a question of law or jurisdiction.

Where a decision is appealed to the Supreme Court, the court may confirm, reverse or vary the decision, or make any order the court considers just in the circumstances.

Costs

The Commission also has the power to award costs. If the Commission finds it is appropriate, it may order that a party or intervenor pay another party or intervenor any or all of the actual costs of the appeal.



Legislative Amendments Affecting the Commission

Forest Practices Code of British Columbia Act and *Forest and Range Practices Act*

One of the Government's New Era commitments was to streamline the *Code* and to establish a new "results based" forest and range planning and practices framework that maintains both environmental protection and tough penalties for non-compliance. On January 31, 2004, the *Forest and Range Practices Act* was brought into force by regulation, as a part of a two-year transition period within which government and industry will change from the *Code* to the *Forest and Range Practices Act*.

The *Forest and Range Practices Act* states that the Commission is continued under section 194 of the *Code*, and it incorporates many of the Commissions powers and procedures set out in the *Code*. In particular, sections 131 to 141 of the *Code* apply to appeals under the *Forest and Range Practices Act*. The *Forest and Range Practices Act* sets out which determinations, under the *Forest and Range Practice Act* and the *Code*, are available for: correction, review, and appeal. Reviews are no longer mandatory before appeals can be made to the Commission. The person who is the subject of the determination, and the Forest Practices Board, may appeal the determination to the Commission or a decision made after completion of a review of the determination, but not both.

As part of the transition, a number of amendments were made to the *Code* in 2004 that are relevant to the Commission and the appeals that may be filed with the Commission.

- Large portions of the *Code* were repealed (sections 1.1, 6, 7, 8, 10 to 74 and 96 to 130, 131.1, 138, 143, 144, 145, 147 and 150 to 153, 162.1 to 193, 206, 208 to 214, 216 to 217.1 and 219 to 252) by the *Forest and Range Practices Amendment Act*, 2003, S.B.C. 2003, c. 55, effective January 31, 2004.
- Sections were also added to the *Code*. The additions of sections 130.1 and 161.1 declared that Parts 6 (Compliance and Enforcement), 7 (General), and 8 (Forest Practices Board) of the *Forest and Range Practices Act* apply to the *Code* and its regulations, effective January 31, 2004. Section 143.1 was also added and lists the fines and imprisonment available for contraventions of the fire use and prevention, and the fire control and suppression provisions of the *Code*.
- The *Forest and Range Practices Amendment Act*, 2003, substituted section 196 with new provisions, which state how employees of the Commission who carry out its powers and duties, may be appointed, engaged or retained.

The substitutions also state that a person is not entitled to an oral hearing as of right, and establish how the Chair may delegate powers.

- The *Forest and Range Practices Amendment Act, 2003* also modified section 131 of the *Code*. Section 131 sets out how appeals to the Commission under sections 82 and 83 of the *Forest and Range Practices Act* are to be initiated. The Commission will continue to hear appeals with respect to matters regulated by the *Code* while it is being phased out.
- Also, section 162 was amended by the *Forest and Range Practices Amendment Act, 2003*, effective January 31, 2004, by varying the sections under the *Code* that make a person liable to government for costs incurred by particular orders.

Forest Act

Amendments were made to various sections of the *Forest Act* in 2004 to accommodate the coming into force of the *Forest Range and Practices Act*.

- In order to aid the transition from the *Code*, the *Forest and Range Practices Amendment Act, 2003*, S.B.C. 2003, c. 55 and the *Forests Statutes Amendment Act (No. 2), 2003* S.B.C. 2003, c. 56, both made numerous adjustments to the wording of several *Forest Act* provisions, such as striking out "the *Forest Practices Code of British Columbia Act*" and substituting "the *Forest and Range Practices Act*", and by stating that certain definitions are as defined in the *Forest and Range Practices Act*, rather than as defined in the *Code*.
- The *Forest and Range Practices Amendment Act, 2003* also repealed sections 138, 139, and 167 of the *Forest Act*, effective January 31, 2004.
- The *Forests Statutes Amendment Act (No. 2), 2003* altered sections 118 and 151 of the Forest Act, effective January 31, 2004. Section 118, was amended to state that a road permit must authorize holders to use, construct, or manage the road in accordance with the *Forest and Range Practices Act*, its regulations and standards. Section 151 states that the Lieutenant Governor in Council may make regulations respecting administrative penalties that, under section 71 of the *Forest and Range Practices Act*, may be imposed for the contravention of a provision of the *Forest Act*.
- The requirement to hold a hearing within 45 days of an appeal being filed under the *Forest Act* or *Range Act* was repealed effective December 3, 2004.

Range Act

Amendments were also made to various sections of the *Range Act* in 2004 to accommodate the coming into force of the *Forest and Range and Practices Act*.

- In order to aid the transition from the Code, the *Forest and Range Practices Amendment Act, 2003*, S.B.C. 2003, c. 55 struck out "the *Forest Practices Code of British Columbia Act*" and substituted "the *Forest and Range Practices Act*" in several *Range Act* provisions.
- Additionally, the *Forest and Range Practices Amendment Act, 2003* amended section 9.2(2) to state that an authorization under that section is to be interpreted by considering definitions and provisions of the *Forest and Range Practices Act*, and that it must include terms and conditions that are consistent with that Act, its regulations and standards.

- Finally, section 47(3) was repealed and section 47.1 was added to state that the *Forest and Range Practices Act* applies to the *Range Act* and that sections 131 to 141 of the *Code* apply to an appeal under the *Forest and Range Practice Act* in respect of a contravention of the *Range Act* and regulations.

Private Managed Forest Land Act

Section 33 of the *Private Managed Forest Land Act* creates a right of appeal to the Commission for persons who are subject to certain orders, decisions or determinations of the Private Managed Forest Land Council, and came into force, by regulation on August 3, 2004.

Wildfire Act

The *Wildfire Act*, S.B.C. 2004, c. 31, received royal assent on April 29, 2004 and creates a right of appeal to the Commission from certain orders and decisions. The *Wildfire Act* did not come into force during the 2004 reporting period.

Evaluation and Recommendations

Under the *Administrative Review and Appeal Procedure Regulation* and section 197 of the *Code*, the Commission is mandated to annually evaluate the review and appeal process and identify any problems that have arisen. The Commission also makes recommendations on amendments to the legislation respecting reviews and appeals.

Appeals

The number of appeals filed with the Commission in 2004 was markedly higher than the number filed in 2003. The main increase in appeals was observed in relation to appeals under the *Forest Act*. Whereas there were two appeals filed in 2003 under the *Forest Act*, there were 89 filed in 2004.

As well, 2004 saw an increase in the number of appeals filed under the *Code*. There were eight appeals filed under the *Code* in 2003, compared with 23 in 2004. There was a minor increase in the number of appeals filed under the *Range Act*, as none were filed in 2003, compared with one in 2004.

Additionally, three appeals were filed under the new *Forest and Range Practices Act* in 2004.

The *Private Managed Forest Land Act* also came into force during the 2004 reporting period. However, no appeals were filed under that Act during the report period.

Recommendations

During 2004, numerous appeals were filed under the *Forest Act*, primarily against decisions made in relation to stumpage rates. For most of the year, the statutory time period for holding a hearing under the *Forest Act* was 45 days from the date the Commission received the notice of appeal, unless all parties agreed otherwise. This time period was an impediment to a pre-hearing resolution of the matters under appeal. The Commission recommended to the Ministry that this time period be repealed. This recommendation has been accepted, and this requirement was repealed effective December 3, 2004. Now, as a matter of standard procedure, the Commission will hold appeals in abeyance for 30 days to allow parties to resolve their issues. That period may be extended at the request of the parties. If the parties are unable to negotiate a solution to the dispute, a hearing is scheduled.

Statistics

Forest Appeals Commission

The following tables provide information on the appeals filed with the Commission and decisions published by the Commission, during the report period. The Commission publishes all of its decisions on the merits of an appeal, and most of the important preliminary and post-hearing decisions. The Commission also issues unpublished decisions on a variety of preliminary matters that are not included in the statistics below.

A total of 116 appeals were filed with the Commission in 2004. Twenty-three of these appeals were filed under the *Code*, 89 were filed under the *Forest Act*, three were filed under the *Forest and Range Practices Act* and one appeal was filed under the *Range Act*. The total number of appeals closed during the reporting period was 25; six appeals had been rejected, 14 withdrawn, two abandoned, and three were closed due to lack of jurisdiction/standing. A total of 27 appeals were heard in 2004.*

The Commission issued 54 decisions in 2004, including 19 consent orders.

Appeals filed	
Appeals filed under the *Code*	23
Appeals filed under the *Forest Act*	89
Appeals filed under the *Forest and Range Practices Act*	3
Appeals filed under the Private Managed Forest Land Act	0
Appeals filed under the Range Act	1
Total Appeals filed	**116**
Appeals abandoned rejected or withdrawn	25
Hearings held on the merits of appeals	
Oral hearings completed	12
Written hearings completed	15
Total hearings held on the merits of appeals**	**27**
Published Decisions issued	
Final decisions	
Under the *Code*	4
Under the *Forest Act*	20
Under the *Forest and Range Practices Act*	2
Under the *Private Managed Forest Land Act*	0
Under the *Range Act*	0
Consent Order (*Code*)	2
Consent Order (*Forest Act*)	16
Consent Order (*Forest and Range Practices Act*)	1
Consent Order (*Private Managed Forest Land Act*)	0
Consent Order (*Range Act*)	0
Decisions on Preliminary Matters	9
Total Published Decisions issued	**54**

▲

This table provides a summary of the appeals filed with this office and their status.

* Note: hearings held and decisions issued in 2004 do not necessarily reflect the number of appeals filed in 2004. Of the 54 decisions issued in 2004, one was in relation to an appeal filed in 2001, two were in relation to appeals filed in 2002, and eight were in relation to appeals filed in 2003.

** Note: most preliminary applications and post-hearing applications are conducted in writing. However, only the final hearings on the merits of the appeal have been included in this statistic.

Summaries of Decisions

January 1, 2004 – December 31, 2004

As stated under the "Statistics" section of this report, the Commission publishes all of its decisions on the merits of an appeal (final decisions), and most of the important preliminary and post-hearing decisions. The Commission also issues unpublished decisions on a variety of preliminary matters.

The following are summaries of a selection of published decisions that were issued by the Forest Appeals Commission during 2004.

Appeals under the *Code*

2001-FOR-009(a) Bawnie Robinson on behalf of the Estate of Harry David Robinson v. Government of British Columbia (Ole Getz, Allan Colbourne, Third Parties)
Decision Date: January 23, 2004
Panel: Alan Andison

Bawnie Robinson appealed the District Manager's determination, as upheld by a Review Panel, that her father, Harry David Robinson, contravened sections 67(1) and 96(1) of the *Code* by cutting and removing Crown timber without authority. Ms. Robinson appealed the penalty issued for the two contraventions on behalf of her father's estate.

The Commission held that a monetary penalty of zero was appropriate in the circumstances. It found that the penalty against Mr. Colbourne, who was responsible for supervising and directing Mr. Robinson's harvesting, compensated the Crown for the unauthorized harvesting. In addition, the Commission held that specific deterrence was no longer an issue with Mr. Robinson, because he was deceased. General deterrence was maintained given that the contraventions remained on Mr. Robinson's records with the Ministry of Forests. Furthermore, the Commission found that the evidence was inconclusive as to whether Mr. Robinson received any economic benefit from the contraventions.

▶ The appeal was allowed.

2002-FOR-001(a) Ole Getz v. Government of British Columbia (Allan Colbourne, Bawnie Robinson on behalf of the Estate of Harry David Robinson, Third Parties)
Decision Date: January 23, 2004
Panel: Alan Andison

Ole Getz appealed the District Manager's determination, as upheld by a Review Panel, that Mr. Getz contravened section 96(1) of the *Code* by cutting and removing Crown timber without authority. Mr. Getz appealed the penalty levied for the contravention.

The Commission found that no compensatory penalty was required against Mr. Getz, because the Crown was fully compensated for the unauthorized harvesting through the sale of the wood seized. Additionally, the Commission found

that a monetary penalty was not needed to provide deterrence because Mr. Colbourne was responsible for supervising Mr. Getz's work, and there was insufficient evidence to determine whether Mr. Getz received any profit or economic benefit as a result of the contravention. Furthermore, the Commission found that general deterrence would be achieved given that the contravention would remain on Mr. Getz's record with the Ministry.

▶ The appeal was allowed.

2002-FOR-003(a) Allan Colbourne v. Government of British Columbia (Ole Getz, Bawnie Robinson on behalf of the Estate of Harry David Robinson, Third Parties)
Decision Date: January 23, 2004
Panel: Alan Andison

Allan Colbourne appealed the District Manager's determination, that he contravened sections 67(1) and 96(1) of the *Code* by cutting and removing Crown timber without authority and requested that the Commission reduce the penalty levied for the contraventions.

The Commission found that Mr. Colbourne contravened sections 67(1) and 96(1) of the *Code*.

The Commission held that a deterrent penalty and a compensatory penalty were warranted in this case, given Mr. Colbourne's primary role in the series of contraventions at the sites. However, considering the factors in section 117(4) of the *Code*, the Commission concluded that the penalty should be reduced.

▶ The appeal was allowed, in part.

2003-FOR-002(a) Trifon Vlachos v. Government of British Columbia
Decision Date: January 29, 2004
Panel: Lorraine Shore

Trifon Vlachos appealed the District Manager's determination, which was upheld by a Review Panel, that he contravened section 74 of the *Code*, by conducting grazing operations contrary to approved range use plans.

The Commission found that Mr. Vlachos contravened section 74 of the *Code*, and that the evidence did not provide proof of due diligence on the part of Mr. Vlachos. The Commission also found that the penalty was appropriate in the circumstances.

▶ The appeal was dismissed.

2003-FOR-004(a) Estate of Benjamin B. Bolen v. Government of British Columbia (Forest Practices Board, Third Party)
Decision Date: June 23, 2004
Panel: Lorraine Shore

The Estate appealed a District Manager's determination, as confirmed by a Review Panel, that Benjamin Bolen had contravened section 74 of the *Code*, by conducting grazing operations contrary to an approved range use plan.

The Commission found that Mr. Bolen had allowed overgrazing in contravention of section 74 of the *Code*, and that he had not established a defence of due diligence to the overgrazing contravention.

The Commission found that a deterrent penalty was appropriate in this case. However, based on the circumstances and a review of previous Commission decisions, the Commission held that the penalty should be reduced from $500 to $300.

▶ The appeal was allowed, in part.

2003-FOR-005(a) and 2003-FOR-006(a) Kalesnikoff Lumber Co. Ltd. v. Government of British Columbia (Forest Practices Board, Third Party)(Interior Lumber Manufacturer's Association, Council of Forest Industries and Coast Forest and Lumber Association, Applicants)
Decision Date: May 10, 2004
Panel: Alan Andison

The Interior Lumber Manufacturer's Association, the Council of Forest Industries and the Coast Forest and Lumber Association applied for intervenor status in two appeals by Kalesnikoff Lumber Co. Ltd. The appeals were against a determination by the District Manger that Kalesnikoff had contravened the *Code* in respect of a landslide and other erosion. The Applicants sought intervenor status to participate in the legal argument on the statutory defence of due diligence.

The Commission found that the Applicants had a valid interest in the issues raised in the Kalesinikoff appeals, had a unique, industry-wide perspective on the issues and possessed information, expertise, and views that would be of assistance in the appeals. The Commission found that their participation would not cause undue delay or duplication of evidence provided certain conditions were met.

▶ The application for intervenor status was granted.

Appeals under the *Forest and Range Practices Act*

2004-FOR-005(a) Weyerhaeuser Company Limited v. Government of British Columbia (Forest Practices Board, Third Party) (Sierra Club of Canada, Applicant)
Decision Date: October 15, 2004
Panel: Alan Andison

The Sierra Club of Canada applied for intervenor status in an appeal filed by Weyerhaeuser Company Limited against a determination that it had contravened section 96 of the *Code* by cutting Crown timber without authorization. The Sierra Club sought to make submissions on the interpretation and application of the due diligence defence set out in section 72 of the *Forest and Range Practices Act*.

The Commission found that the Sierra Club had a valid interest in the proceedings, and its participation would be of assistance in fully canvassing the issues. The Commission determined that it was appropriate to limit the participation of the Sierra Club so as not to prejudice the Appellant. The application was allowed, subject to limitations on the scope and length of the Sierra Club's submissions.

▶ The application for intervenor status was granted.

2004-FOR-018(a) Gilbert Pollard v. Government of British Columbia
Decision Date: November 4, 2004
Panel: Alan Andison

Gilbert Pollard appealed a determination by the District Manager that Mr. Pollard had contravened sections 96(1) and 96(2) of the *Code* by harvesting and removing Crown timber without a permit. Mr. Pollard appealed the penalty of $15,000 levied against him for the contraventions. The appeal was filed pursuant to section 82 of the *Forest and Range Practices Act*.

Mr. Pollard failed to appear at the scheduled hearing. However, the Government submitted evidence at the hearing indicating that there should be a decrease in the penalty based on the sale of the timber that had been seized as a result of the contravention. The Commission issued an oral decision ordering that the penalty be reduced as requested by the Government.

▶ The appeal was allowed, in part.

Appeals under the *Forest Act*

2003-FA-001(a) Riverside Forest Products Limited v. Government of British Columbia
Decision Date: March 12, 2004
Panel: David Ormerod

Riverside Forest Products Limited appealed five stumpage appraisal determinations by the Timber Pricing Forester, which were upheld by a Review Panel. Riverside asked the Commission to rescind the appraisals and refer the matter back for recalculation.

The issues in this appeal were whether the recommendations of the Regional Appraisal Advisory Committee ("RAAC") and the policy directives issued by the Ministry's regional managers were relevant to the stumpage determinations under appeal, whether the engineered cost estimates for small corrugated steel pipe culverts should be calculated by applying the trend factor specified in the Interior Appraisal Manual ("IAM") to the installed culvert cost estimates listed in the Ministry's 1993 Engineering Manual, and what the appropriate remedy was in this situation.

The Commission found that both the RAAC's recommendations and the policy directives issued by the regional managers on matters addressed by the IAM were not binding and did not have the legal force of the IAM. The Commission referred the matter back to the Timber Pricing Forester with directions to recalculate the stumpage rates using installed culvert cost estimates from the 1993 Engineering Manual, together with a 1.290 trend factor from the IAM.

▶ The appeal was allowed.

2003-FA-002 Slocan Forest Products Ltd. v. Government of British Columbia
Decision Date: March 4, 2004
Panel: James Hackett

Slocan Forest Products Ltd. appealed a stumpage advisory notice ("SAN"), issued by the Appraisal Coordinator. Slocan sought to have the notice rescinded and to direct the Appraisal Coordinator to re-appraise the cutting permit using cost estimates taken from the Engelmann Spruce-Subalpine Fir ("ESSF") biogeoclimatic zone section of the IAM, rather than the zone that was used originally.

The Commission found that the ESSF zone could not be used as a "proxy" for the Spruce-Willow-Birch zone when calculating Slocan's road construction and tree-to-truck costs in this case. The Commission found that the calculation procedure adopted by the Ministry was both supported by the IAM, and was generally a fair method of dealing with a situation where there were multiple zones involved. Furthermore, the Commission found that Slocan failed to provide evidence or legal precedents to support its position.

▶ The appeal was dismissed.

2004-FA-001(a) 510572 B.C. Ltd. v. Government of British Columbia
Decision Date: April 8, 2004
Panel: James Hackett

510572 B.C. Ltd. appealed the stumpage rate determination by the Timber Pricing

Coordinator, on the grounds that the rate was not calculated using a base cutting permit that was fair and equitable for all woodlot licences in the Prince George Forest District.

The Commission found that the stumpage rate for the cutting permit was acceptable in the circumstances.

- The appeal was dismissed.

2004-FA-002(a) Daniel Marcoux v. Government of British Columbia
Decision Date: June 10, 2004
Panel: Alan Andison

Daniel Marcoux appealed a Review Panel decision that varied a decision of the Timber Sales Manager. The Manager disqualified Mr. Marcoux from the Timber Sales Program for six months for failure to fulfill obligations under a Bark Beetle Timber Sale and Multiphase Licence. The Review Panel reduced the disqualification period.

The Commission confirmed the disqualification, as varied by the Review Panel.

- The appeal was dismissed.

2004-FA-003(a) Western Forest Products Limited v. Government of British Columbia
Decision Date: July 22, 2004
Panel: Margaret Eriksson, Al Gorley, Robert Wickett

Western Forest Products appealed several SANs issued by the Regional Appraisal Coordinator. As a preliminary issue, the Government applied to have the appeal dismissed on the basis that the Commission did not have jurisdiction to hear the appeal because the "decision" under appeal was not one that was appealable under the Act.

- The application was denied.

2004-FA-003(b) Western Forest Products Limited. v. Government of British Columbia
Decision Date: November 29, 2004
Panel: Margaret Eriksson

A preliminary jurisdictional issue was raised in the appeal by Western Forest Products Limited of several SANs issued by a Regional Appraisal Coordinator. The question was whether Western was required to have the SANs reviewed by a Review Panel prior to filing an appeal.

- The Commission found that no review was required in this case and the Commission had jurisdiction to hear the appeal.

2004-FA-004(a) Robin Stuart Tutte v. Government of British Columbia
Decision Date: June 2, 2004
Panel: David Ormerod

Robin Stuart Tutte appealed a Review Panel decision confirming a stumpage rate determination that applied to Mr. Tutte's cutting permit. Mr. Tutte appealed the determination on the grounds that the method used to determine the rate was inequitable, and he sought to have the stumpage rate reduced.

The Commission found that the selection of a base permit, in this case, may have been based on cutting permits that were not harvested in the period and, if this was the case, the base permit was unreasonable. The Commission ordered that the matter be sent back to the Acting Appraisal Coordinator for reconsideration, with directions to ensure that the base permit reflects actual harvested permits for that period.

- The appeal was allowed, in part.

2004-FA-005(a) Green Mountain Ranch Co. Ltd. v. Government of British Columbia
Decision Date: May 27, 2004
Panel: James Hackett

Green Mountain Ranch Co. Ltd. appealed a stumpage rate contained in stumpage advisory and stumpage adjustment notices on the grounds that it was not notified of the rate in a timely manner. It asked the Commission to rescind the notices and "deem" Green Mountain's election of a fixed stumpage rate to have occurred at an earlier date to lock in a lower rate.

The Commission found that the policy on timelines set out in the Ministry of Forests' Policy Manual is not incorporated by reference into the IAM or the *Forest Act*. As a result, the late delivery of the notices did not constitute a breach of statutory obligations of the Ministry or a basis for declaring the advisory and adjustment notices ineffective. The Commission found that Green Mountain could have elected to fix its stumpage rate at earlier levels by notifying the Ministry, and its failure to do so was not the responsibility of the Ministry of Forests.

▶ The appeal was dismissed.

2004-FA-006(a) Abitibi-Consolidated Company of Canada v. Government of British Columbia
Decision Date: June 10, 2004
Panel: Alan Andison

Abitibi-Consolidated Company of Canada appealed a letter from the Timber Pricing Coordinator issued in response to objection letters from Abitibi. The Timber Pricing Coordinator's letter upheld SANs issued for five cutting permits.

The Commission found that the original SANs, and not the letter, constituted determinations that could be appealed. However, the Commission found that four of the SANs had to be reviewed by a Review Panel prior to an appeal. Therefore, the Commission had no jurisdiction over those appeals.

▶ The Commission concluded that it did have jurisdiction over the appeal pertaining to the one SAN, as it was issued after the requirement of a hearing before a review panel was repealed.

2004-FA-009(a) Silver Star Timber Ltd. v. Government of British Columbia
Decision Date: August 10, 2004
Panel: James Hackett

Silver Star Timber Ltd. appealed a Review Panel decision upholding a stumpage rate determination issued by the Timber Pricing Forester.

The Commission found that Silver Star failed to provide sufficient evidence to support its claim that Baker Forest Service Road required upgrading and that the cost for this work should be factored into its stumpage determination. The Commission found that the Review Panel issued its decision four months after the deadline set out in the Regulation, but noted that Silver Star did not submit that it had suffered any prejudice as a result of the delay. The Commission found that the delay had not prevented Silver Star from exercising its right to appeal the review decision and that the defect in the review process was inconsequential.

▶ The appeal was dismissed.

2004-FA-010(a) William Isaac Cowan v. Government of British Columbia
Decision Date: September 14, 2004
Panel: David Ormerod

William Isaac Cowan appealed a stumpage rate determination with respect to a cutting permit on the grounds that the Ministry of Forests incorrectly applied an effective date of September 1, 2003 to the stumpage reappraisal rate made under section 2.4.1(1)(b) of the IAM.

The Commission agreed and found that the appropriate effective date for a reappraisal was October 1, 2003.

▶ The appeal was allowed.

2004-FA-013(a) Abitibi-Consolidated Company of Canada v. Government of British Columbia
Decision Date: September 8, 2004
Panel: Cindy Derkaz, R.A. Gorley, Paul Love

Abitibi-Consolidated Company of Canada appealed a SAN issued by the Timber Pricing Coordinator for a cutting permit in the Osilinka operating area. Abitibi asked the Commission to find that the cutting permit was in an "isolated cutting authority area" under the IAM, which would increase the Ministry's appraisal of Abitibi's logging costs and decrease the stumpage rates that Abitibi would pay.

The Commission held that, in this case, the continuous road access from a support centre was the primary and customary way of moving people, supplies and some equipment, in the ordinary course of business, to the cutting permit area. Although a barge was used to move some equipment, this was a business decision by Abitibi and did not detract from the fact that there was continuous road access. The Commission found that the cutting permit area was not in an isolated cutting authority area under the IAM.

▶ The appeal was dismissed.

2004-FA-026(a) and 2004-FA-027(a) Canadian Forest Products Ltd. and Tackama Forest Products Ltd. v. Government of British Columbia.
Decision Date: December 9, 2004
Panel: Cindy Derkaz

Canadian Forest Products Ltd. and Tackama Forest Products Ltd. filed separate appeals regarding SANs issued by the Timber Pricing Coordinator and by the Revenue Manager, respectively. The Appellants submitted that the cutting permit areas were "isolated cutting authority areas" pursuant to the IAM, and that the Ministry should have applied the isolated cutting authority area provisions of section 4.8.2 of the IAM to the stumpage rate determinations.

The Commission found that the roads leading into both cutting permit areas were non-existent for eight months of the year due to geographic and climatic conditions, thus the cutting permits clearly met the definition of an isolated cutting authority in section 4.8.2. There were no words in section 4.8.2 to limit its application to the tree-to-truck phase of logging operations, as the Government submitted.

The Commission referred the matter back to the persons who made the stumpage determinations with instructions to recalculate the total stumpage rate for both cutting permits by including an isolation cost estimate pursuant to section 4.8.2 of the IAM.

▶ The appeals were allowed.

2004-FA-034(a) Babine Timber Limited v. Government of British Columbia
Decision Date: November 3, 2004
Panel: R.A. Gorley

Babine Timber Limited appealed a stumpage rate determination issued by the Timber Pricing Coordinator, who reduced the Engineered Cost Estimates (the "ECE") for a bridge to reflect a shorter span; reduced costs for grass seeding along part of a road upgrade; and, rejected the ECE for paving approaches to a bridge.

The Commission held that Babine did not provide the Timber Pricing Coordinator or the Commission with sufficient information or justification for the longer bridge span; that the seeding costs should be allowed because the IAM and the Ministry's regional policy documents governing the cost allowance for brushing were unclear; and that the matter of the ECE for paving the approaches to the bridge should be sent back for reconsideration, with directions.

▶ The appeal was allowed, in part.

2004-FA-035(a); 2004-FA-036(a); 2004-FA-037(a) Weyerhaeuser Company Limited v. Government of British Columbia

Decision Date: December 17, 2004

Panel: Alan Andison, Bruce Devitt, R.A. Gorley

Weyerhaeuser Company Limited appealed three stumpage appraisal determinations for cutting permits on the grounds that the stumpage rates and the selling price estimates for the timber should be calculated on the basis of log grade percentages from the cruise compilation algorithm predictions, rather than the billing history records.

The Commission found that the Regional Appraisal Coordinator interpreted the relevant sections of the Coast Appraisal Manual ("CAM") correctly and properly determined the stumpage rates. It concluded that the cutting permit areas at issue in these appeals did not contain at least 80 percent second growth coniferous timber by volume. As the cutting permit areas in these appeals did not "contain" second growth coniferous timber as defined by the CAM, section 3.2.2(8)(b) of the CAM, which allows for the log grade percentages to be determined by cruise compilation algorithm predictions, did not apply.

▶ The appeals were dismissed.

2004-FA-043(a); 2004-FA-044(a); 2004-FA-045(a); 2004-FA-046(a)Western Forest Products Ltd. v. Government of British Columbia

Decision Date: December 31, 2004

Panel: Alan Andison

Western Forest Products Ltd. appealed four SANs that were issued by the Regional Appraisal Coordinator, for four cutting permits held by Western. The cutting permits were reappraised pursuant to a new system, the Market Pricing System (the "MPS"), which replaced the Comparative Value Pricing System effective on February 29, 2004 in the Coast Region. A new CAM came into effect on that date (the "2004 CAM"), which applied to the MPS conversion reappraisals.

The Commission found that the Regional Appraisal Coordinator erred when he used a road maintenance value of zero to determine the MPS conversion reappraisals for the cutting permits. Furthermore, sections 5.1 and 5.4 of the 2004 CAM clearly direct the Regional Appraisal Coordinator to take into account road maintenance costs when calculating the tenure obligation adjustment for MPS stumpage rates if there are parts of a cutting authority area where the logs will be transported over a road by truck.

The Commission referred the matter back to the Regional Appraisal Coordinator and directed him to reappraise the stumpage rates for the cutting permits in order to account for road maintenance costs, by applying the provisions of the 2004 CAM to the data in the Coast Appraisal Data Sheets that Western submitted for the SANS in effect on February 28, 2004.

▶ The appeals were allowed.

2004-FA-059(a) Esker Lake Forest Management Ltd. v. Government of British Columbia

Decision Date: December 22, 2004

Panel: David Ormerod

Esker Lake Forest Management Ltd. appealed a stumpage rate determination of the Timber Pricing Coordinator for a blanket salvage cutting permit.

The Commission found that the Timber Pricing Coordinator correctly denied Esker's request for an extension of the appraisal expiry date. The Commission found that the IAM was applied systematically and equitably, and delaying the reappraisal of the cutting permit by nearly three months did not breach a statutory requirement. The outcome may have compromised the Esker's ability

to harvest beetle-damaged timber, but it was reached in accordance with the statutory requirements.

- The appeal was dismissed.

Appeals under the *Private Managed Forest Land Act*

There were no decisions issued under the *Private Managed Forest Land Act* during the report period.

Appeals under the *Range Act*

There were no decisions issued under the *Range Act* during the report period.

Appeals of Decisions

January 1, 2004 – December 31, 2004

British Columbia Supreme Court

There were no judgments made during the reporting period.

British Columbia Court of Appeal

There were no judgments made during the reporting period.

Supreme Court of Canada

There were no judgments made during the reporting period.

However, the Commission can report as follows regarding the 2003 decision of the Supreme Court of Canada in *Paul v. British Columbia (Forest Appeals Commission)* 2003 S.C.C. 55.

In its decision, the Supreme Court of Canada concluded that the Commission has power to determine questions of law including the authority to decide questions of aboriginal rights arising incidentally to forestry matters. The Court remitted Mr. Paul's case back to the Commission with the following directions:

> My conclusions mean that the Commission has jurisdiction to continue hearing all aspects of the matter of Mr. Paul's four seized logs. Unless he moves in the Supreme Court of British Columbia for a declaration respecting his aboriginal rights, Mr. Paul must present the evidence of his ancestral right to the Commission. As yet he has merely asserted his defence.

During the 2004 report period, Mr. Paul's appeal to the Commission was ultimately dismissed as abandoned.

APPENDIX I

Legislation and Regulations

The legislation contained in this report is the legislation in effect at the end of the reporting period (December 31, 2004). Please note that subsequent to the publication of this Annual Report, the legislation may have been amended. An updated version of the legislation may be obtained from Crown Publications.

Forest Practices Code of British Columbia Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 – Administrative Review and Appeals

Part 6 of the *Forest and Range Practice Act* applies

130.1 Part 6 of the *Forest and Range Practices Act* applies to this Act and the regulations under this Act, unless the context indicates otherwise.

Appeal

131 (1) To initiate an appeal under section 82 or 83 of the *Forest and Range Practices Act*, the person referred to in section 82 (1) of that Act, or the board under section 83 (1) of that Act, no later than 3 weeks after the latest to occur of

(a) the original decision,

(b) any correction under section 79 of that Act, and

(c) any review under section 80 or 81 of that Act,

must deliver to the commission

(d) a notice of appeal,

(e) a copy of the original decision, and

(f) a copy of any decision respecting a correction or review.

(2) Repealed.

(3) The person or board bringing the appeal must ensure the notice of appeal given under subsection (1) complies with the content requirements of the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) If the person or the board does not deliver the notice of appeal within the time specified, the person or board loses the right to an appeal.

(6) On receipt of the notice of appeal, the commission must, in accordance with the regulations, give a copy of the notice of appeal to the ministers and

(a) to the board, if the notice was delivered

(i) by the person who is the subject of the determination, or

(ii) for an appeal of a failure to make a determination, by the person who would be the subject of a determination, if made,

(b) to the person who is the subject of the determination, if the notice was delivered by the board, or

(c) for an appeal of a failure to make a determination, to the person who would be the subject of a determination, if made, if the board delivered the notice.

(7) The government, the board, if it so requests, and the person who is the subject of the determination or would be the subject of a determination, if made, are parties to the appeal.

(8) At any stage of an appeal the commission or a member of it may direct that a person who may be affected by the appeal be added as a party to the appeal.

(9) After a notice of appeal is delivered under subsection (1), the parties must disclose the facts and law on which they will rely at the appeal, if required by the regulations and in accordance with the regulations.

(10) The commission, after receiving a notice of appeal, must

(a) promptly give the parties to an appeal a hearing, or

(b) hold a hearing within the prescribed period, if any.

(11) Despite subsection (10), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts or law under subsection (9) or (14), the commission need not hold a hearing within the prescribed period referred to in subsection (10), but must hold a hearing within the prescribed period after a notice of appeal that does comply with the content requirements of the regulations is delivered to the commission, or the facts and law are disclosed as required under subsection (9) or (14).

(12) A party may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under section 129,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(13) The commission may invite or permit a person to take part in a hearing as an intervenor.

(14) An intervenor may take part in a hearing to the extent permitted by the commission and must disclose the facts and law on which the intervenor will rely at the appeal, if required by the regulations and in accordance with the regulations.

(15) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

132 (1) The commission or a member of it may order the parties to deliver written submissions.

(2) If the party that initiated the appeal fails to deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that every party to the appeal has the opportunity to review written submissions from the other parties and an opportunity to rebut the written submissions.

Interim orders

133 The commission or a member of it may make an interim order in an appeal.

Open hearings

134 Hearings of the commission must be open to the public.

Witnesses

135 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

136 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

137 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

relevant to the subject matter of the appeal and may act on the evidence.

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court by reason of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Section Repealed

138 [Repealed 2003-55-95.]

Decision of commission

139 (1) The commission must make a decision promptly after the hearing, and must give copies of the decision to the ministers, the parties and any intervenors.

(2) On the request of any of the ministers or a party, the commission must provide written reasons for the decision.

(3) The commission must make a decision within the prescribed period, if any.

Order for compliance

140 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission or a party may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to court

141 (1) The minister or a party to the appeal, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision or order of the commission be stayed in whole or in part.

(3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 9

FOREST APPEALS COMMISSION

Forest Appeals Commission Continued

194 (1) The Forest Appeals Commission is continued.

(1.1) The commission is to hear appeals under

(a) Division 4 of Part 6, and

(b) the *Forest Act*, the *Private Managed Forest Land Act*, and the *Range Act* and, in relation to appeals under those Acts, the commission has the powers given to it by those Acts.

(2) The commission consists of the following members appointed by the Lieutenant Governor in Council after a merit based process:

(a) a member designated as the chair;

(b) one or more members designated as vice chairs after consultation with the chair;

(c) other members appointed after consultation with the chair.

(3) The *Administrative Tribunals Appointment and Administration Act* applies to the commission.

(4) Repealed.

(5) Repealed.

(6) Repealed.

Organization of the commission

195 (1) The chair may organize the commission into panels, each comprised of one or more members.

(2) The members of the commission may sit

(a) as a commission, or

(b) as a panel of the commission

and 2 or more panels may sit at the same time.

(3) If members of the commission sit as a panel,

(a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the commission, and

(b) an order, decision or action of the panel is an order, decision or action of the commission.

Commission staff

196 (1) Employees necessary to carry out the powers and duties of the commission may be appointed under the *Public Service Act*.

(2) In accordance with the regulations, the commission may engage or retain specialists or consultants that the commission considers necessary to carry out the powers and duties of the office and may determine their remuneration.

(3) The *Public Service Act* does not apply to the retention, engagement or remuneration of specialists or consultants retained under subsection (2).

No oral hearing as of right

196.1 A person is not entitled to an oral hearing before the commission.

Delegation of powers

196.2 (1) The chair may in writing delegate to a person or class of persons any of the commission's powers or duties under this

Act, except the power

(a) of delegation under this section, or

(b) to make a report under this Act.

(2) A delegation under this section is revocable and does not prevent the commission exercising a delegated power.

(3) A delegation may be made subject to terms the chair considers appropriate.

(4) If the chair makes a delegation and then ceases to hold office, the delegation continues in effect as long as the delegate continues in office or until revoked by a succeeding chair.

(5) A person purporting to exercise a power of the commission by virtue of a delegation under this section must, when requested to do so, produce evidence of his or her authority to exercise the power.

Mandate of the commission

197 (1) In accordance with the regulations, the commission must

(a) hear appeals under Division 4 of Part 6 and under the *Forest Act* and the *Range Act*,

(b) provide

(i) the ministers with an annual evaluation of the manner in which reviews and appeals under this Act and the regulations are functioning and identify problems that may have arisen under their provisions, and

(ii) the Minister of Forests with an annual evaluation of the manner in which reviews and appeals under the *Forest Act* and the *Range Act* and the regulations relating to those reviews and appeals are functioning and identify problems that may have arisen under their provisions, and

(c) annually, and at other times it considers appropriate, make recommendations

(i) to the ministers concerning the need for amendments to this Act and the regulations respecting reviews and appeals,

(ii) to the Minister of Forests concerning the need for amendments to the *Forest Act* and the *Range Act* and related regulations respecting reviews and appeals under those Acts, and

(d) perform other functions required by the regulations.

(2) The chair must give to the ministers an annual report concerning the commission's activities.

(3) The ministers must promptly lay the report before the Legislative Assembly.

The *Forest and Range Practices Act* came into force on January 31, 2004.

Forest and Range Practices Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 Correction, Reviews and Appeals

Determinations stayed until proceedings concluded

78 (1) A determination that may be reviewed under section 80 or appealed under section 82 is stayed until the person who is the subject of the determination has no further right to have the determination reviewed or appealed.

(2) Despite subsection (1), the minister may order that a determination, other than a determination to levy an administrative penalty under section 71 or 74 (3) (d) is not stayed or is stayed subject to conditions, on being satisfied that a stay or a stay without those conditions, as the case may be, would be contrary to the public interest.

(3) Despite subsection (1), a determination is not stayed if the determination is made under prescribed sections or for prescribed purposes.

Correction or clarification of a determination

79 (1) Within 15 days after a determination is made under section 82 or 95 (2) of the *Forest Practices Code of British Columbia Act* or under section 16, 26 (2), 27 (2), 32 (2), 37, 51 (7), 54 (2), 57 (4), 66, 71, 74 or 77 of this Act, the person who made the determination may

(a) correct a typographical, an arithmetical or another similar error in the determination, and

(b) Repealed.

(c) correct an obvious error or omission in the determination.

(2) The correction does not take effect until the date on which the person who is the subject of the determination is notified of it under subsection (4).

(3) The discretion conferred under subsection (1)

(a) is to be exercised in the same manner as the determination affected by it, and

(b) is exercisable with or without a hearing and

(i) on the initiative of the person who made the determination, or

(ii) at the request of the person who is the subject of the determination.

(4) The person who corrected a determination under this section must notify the person who is the subject of the determination.

Review of a determination

80 (1) Subject to subsection (2), at the request of a person who is the subject of a determination under section 82 or 95 (2) of the *Forest Practices Code of British Columbia Act* or under section 16, 20 (3), 26 (2), 27 (2), 32 (2), 37, 38 (5), 39, 51 (7), 54 (2), 57 (4), 66, 71, 74, 77, 77.1, 97 (3), 107, 108, 112 (1) (a) or 155 (2) of this Act, the person who made the determination, or another person employed in the ministry and designated in writing by the minister must review the determination, but only if satisfied that there is evidence that was not available at the time of the original determination.

(2) On a review required under subsection (1) the person conducting the review may consider only

(a) evidence that was not available at the time of the original determination, and

(b) the record pertaining to the original determination.

(3) To obtain a review of a determination under subsection (1) the person must request the review not later than 3 weeks after the date the notice of determination was given to the person.

(4) The minister may extend the time limit for requiring a review under this section before or after its expiry.

(5) The person conducting the review has the same discretion to make a decision that

the original decision maker had at the time of the determination under the review.

Board may require review of a determination

81 (1) If the board first receives the consent of the person who is the subject of a determination under section 82 or 95 (2) of the *Forest Practices Code of British Columbia Act* or under section 16, 37, 71 or 74 of this Act, the board may require a review of the determination by the person who made the determination, or another person employed in the ministry and designated in writing by the minister.

(2) To obtain a review of a determination under subsection (1), the board must require the review not later than 3 weeks after the date the notice of determination was given to the person.

(3) The minister may extend the time limit for requiring a review under this section before or after its expiry.

(4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

Appeal to the commission by a person who is the subject of a determination

82 (1) The person who is the subject of a determination referred to in section 80, other than a determination made under section 77.1, may appeal to the commission either of the following, but not both:

(a) the determination;

(b) a decision made after completion of a review of the determination.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Appeal to the commission by the board

83 (1) The board may appeal to the commission either of the following, but not both:

(a) a determination referred to in section 81;

(b) a decision made after completion of a review of the determination.

(2) The board may apply to the commission for an order under section 84(2) if

(a) an official authorized under section 82 or 95 (2) of the *Forest Practices Code of British Columbia Act* or the minister authorized under section 71 or 74 of this Act to make a determination has not done so, and

(b) a prescribed period has elapsed after the facts relevant to the determination first came to the knowledge of the official or the minister.

(3) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under subsection (1) or an application under subsection (2).

Powers of the commission

84 (1) On an appeal

(a) by a person under section 82(1), or

(b) by the board under section 83(1),

the commission may

(c) consider the findings of the person who made the determination or decision, and

(d) either

(i) confirm, vary or rescind the determination or decision, or

(ii) with or without directions, refer the matter back to the person who made the determination or decision, for reconsideration.

(2) On an application under section 83 by the board the commission may order the official or minister referred to in section 83 (2) to make a determination as authorized under the applicable provision that is referred to in section 83 (2) (a).

(3) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(4) After filing in the court registry, an order under subsection (3) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Forest Act

Part 12

REVIEWS, APPEALS, REGULATIONS, PENALTIES

Division 2 – Appeals

Determinations that may be appealed

146 (1) Subject to subsection (3), an appeal may be made to the Forest Appeals Commission from a determination, order or decision that was the subject of a review required under Division 1 of this Part.

(2) An appeal may be made to the Forest Appeals Commission from

(a) a determination, order or decision of the chief forester, under section 60.6, 68, 70 (2), 77 (1) (b) or 112 (1), and

(b) a determination of an employee of the ministry under section 105 (1).

(3) No appeal may be made under subsection (1) unless the determination, order or decision has first been reviewed under Division 1 of this Part.

(4) If a determination, order or decision referred to in subsection (1) is varied by the person conducting the review, the appeal to the commission is from the determination, order or decision as varied under section 145.

(5) If this Act gives a right of appeal, this Division applies to the appeal.

(6) For the purpose of subsection (2), a redetermination or variation of stumpage rates under section 105 (1) is considered to be a determination.

Notice of appeal

147 (1) If a determination, order or decision referred to in section 146(1) or (2) is made, the person

(a) in respect of whom it is made, or

(b) in respect of whose agreement it is made

may appeal the determination, order or decision by

(c) serving a notice of appeal on the commission

(i) in the case of a determination, order or decision that has been reviewed, not later than 3 weeks after the date the written decision is served on the person under section 145(3), and

(ii) in the case of a determination, order or decision that has not been reviewed, not later than 3 weeks after that date the determination, order or decision is served on the person under the provisions referred to in section 146(2), and

(d) enclosing a copy of the determination, order or decision appealed from.

(2) If the appeal is from a determination, order or decision as varied under section 145, the appellant must include a copy of the review decision with the notice of appeal served under subsection (1).

(3) appellant must ensure that the notice of appeal served under subsection (1) complies with the content requirements of the regulations.

(3.1)After the notice of appeal is served under subsection (1), the appellant and the government must disclose the facts and law on which the appellant or government will rely at the appeal if required by the regulations and in accordance with the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) A person who does not serve the notice of appeal within the time required under subsection (1) or (4) loses the right to an appeal.

Appeal

148 (1) The commission, after receiving the notice of appeal, must

(a) promptly hold a hearing, or

(b) hold a hearing within the prescribed period, if any.

(2) Despite subsection (1), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under section 147(3.1), the commission need not hold a hearing within the prescribed period referred to in subsection (1) of this section, but must hold a hearing within the prescribed period after service of a notice of appeal that does comply with the content requirements of the regulations, or the facts and law are disclosed as required under section 147(3.1).

(3) Only the appellant and the government are parties to the appeal.

(4) The parties may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under Division 1 of this Part,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(5) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

148.1 (1) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(2) If the appellant does not deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party and an opportunity to rebut the written submissions.

Interim orders

148.2 The commission or a member of it may make an interim order in an appeal.

Open hearings

148.3 Hearings of the commission are open to the public.

Witnesses

148.4 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

148.5 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

148.6 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court because of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Powers of commission

149 (1) On an appeal, whether or not the person who conducted the review confirmed, varied or rescinded the determination, order or decision being appealed, the commission may consider the findings of

(a) the person who made the initial determination, order or decision, and

(b) the person who conducted the review.

(2) On an appeal, the commission may

(a) confirm, vary or rescind the determination, order or decision, or

(b) refer the matter back to the person who made the initial determination, order or decision with or without directions.

(3) If the commission decides an appeal of a determination made under section 105, the commission must, in deciding the appeal, apply the policies and procedures approved by the minister under section 105 that were in effect at the time of the initial determination.

(4) The commission may order that a party pay any or all of the actual costs in respect of the appeal.

(5) After filing in the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

(6) Unless the minister orders otherwise, an appeal under this Division does not operate as a stay or suspend the operation of the determination, order or decision under appeal.

Decision of commission

149.1 The commission must make a decision promptly after the hearing and serve copies of the decision on the appellant and the minister.

(2) On request of the appellant or the minister, the commission must provide written reasons for the decision.

(3) The commission must serve a decision within the prescribed period, if any.

Order for compliance

149.2 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission, minister or appellant may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to the courts

150 (1) The appellant or the minister, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision of the commission be stayed in whole or in part.

(3) An appeal from the decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 6 of the *Forest and Range Practices Act* applies

167.3 (1) Divisions 1 to 4 of Part 6 of the *Forest and Range Practices Act* apply to this Act and the regulations under this Act, unless the context indicates otherwise.

(2) Without limiting subsection (1), sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under the *Forest and Range Practices Act* in respect of a contravention of this Act or the regulations under this Act.

Range Act

Review and appeal

41 (1) A review may be required of a determination, order or decision of

(a) a forest officer under section 34, and under a licence or permit, and

(b) a district manager under sections 31, 32, 34, and 35, and under a licence or permit.

(2) A review of the determination, order and decision referred to in subsection (1)(a) and (b) is to be conducted by the regional manager.

(3) If a review is to be conducted by the regional manager under subsection (2), the regional manager may delegate the power to decide the review to an official in the Ministry of Forests.

(4) Subject to subsection (5), an appeal may be made to the Forest Appeals Commission from a determination, order or decision of a forest officer or district manager under the provisions referred to in subsection (1) but only if the determination, order or decision has first been reviewed.

(5) If a determination, order or decision referred to in subsection (1) is varied by the person conducting a review, the appeal to the Forest Appeals Commission is from the determination, order or decision as varied.

(6) The procedures and powers in respect of reviews and appeals under the *Forest Act* apply to reviews and appeals under this section.

Appeal from section 26 decision

42 (1) Section 41 does not apply to an appeal from a decision of a district manager made under section 26.

(2) The holder of a licence or permit affected by a decision to change boundaries under section 26 may appeal the change to the minister by serving, within 21 days after service of the notice referred to in section 26(2), written notice of the appeal on the district manager who made the decision.

(3) The notice of appeal must include the name and address of the appellant, the reasons in support of the appeal and a copy of the notice of the change being appealed.

(4) The minister, or a person designated in writing by the minister, must promptly

(a) hear the appeal,

(b) confirm, reverse or vary the decision of the district manager, and

(c) provide the appellant with a written decision by delivering a copy to the appellant, or by mailing a copy to the appellant by registered mail to the address of the appellant in the notice of appeal.

Appeal not a stay

43 Unless the minister orders otherwise, a review or an appeal taken under this Act does not operate as a stay or suspend the operation of the determination, order or decision being reviewed or appealed.

Part 6 of the *Forest and Range Practices Act* applies

47.1 (1) Part 6 of the *Forest and Range Practices Act* applies to this Act and the regulations under this Act, unless the context indicates otherwise.

(2) Without limiting subsection (1), sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under the *Forest and Range Practices Act* in respect of a contravention of this Act or the regulations under this Act.

This Regulation applies to appeals under the *Code*, *Forest and Range Practices Act*, the *Forest Act* and the *Range Act*.

Administrative Review and Appeal Procedure Regulation (B.C. Reg. 12/04)

Part 1

DEFINITIONS

Definitions

1 In this regulation:

"appellant" means

(a) for a *Forest Act* appeal, the person that initiates an appeal under section 147 (1) of that Act,

(b) for a *Range Act* appeal, the person that initiates an appeal under section 41 (4) of that Act, or

(c) for a *Forest and Range Practices Act* appeal, the person that initiates an appeal under section 82 (1) of that Act, and includes the board if the board initiates an appeal under section 83 (1) of the Act;

Part 3

FOREST APPEALS COMMISSION PROCEDURE

Exemption from time specified to appeal a determination

16 In respect of an appeal under section 83 of the *Forest and Range Practices Act*, the board is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision,

(e) any correction under section 79 of the *Forest and Range Practices Act*, and

(f) any review under section 80 or 81 of the *Forest and Range Practices Act*

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

Prescribed period for board to apply for order

17 The prescribed period for the purpose of section 83 (2) (b) of the *Forest and Range Practices Act* is 6 months.

Notice of appeal

18 The notice of appeal referred to in section 147 (1) of the *Forest Act* and section 131 (1) of the *Forest Practices Code of British Columbia Act*, and the notice of appeal for an appeal under section 41 of the *Range Act*, must be signed by, or on behalf of, the appellant and must contain all of the following information:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for giving a document to, or serving a document on, the appellant;

(c) the grounds for appeal;

(d) a statement describing the relief requested.

Deficient notice of appeal

19 (1) If a notice of appeal does not comply with section 18, the commission may invite the appellant to submit further material remedying the deficiencies within a period specified in a written notice of deficiencies, by

(a) serving the written notice of deficiencies on the appellant, if the appeal is under the *Forest Act* or *Range Act*, or

(b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Forest and Range Practices Act*.

(2) If the commission serves or gives a notice of deficiencies under subsection (1), the appeal that is the subject of the notice of appeal may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, and

(b) the submission to the commission of further material remedying the deficiencies.

Notification of parties following receipt of notice of appeal

20 The commission must acknowledge in writing any notice of appeal, and

(a) in the case of an appeal under the *Forest Act* or *Range Act*, serve a copy of the notice of appeal on the deputy minister of the Ministry of Forests, and

(b) in the case of an appeal under the *Forest and Range Practices Act*, give a copy of the notice of appeal to

(i) the minister, and

(ii) either

(A) the board, if the notice was delivered by the person who is the subject of the determination, or

(B) the person who is the subject of the determination, if the notice was delivered by the board.

Procedure following receipt of notice of appeal

21 (1) Within 30 days after receipt of the notice of appeal, the commission must

(a) determine whether the appeal is to be considered by members of the commission sitting as a commission or by members of the commission sitting as a panel of the commission,

(b) designate the panel members if the commission determines that the appeal is to be considered by a panel,

(c) subject to subsections (2) and (3), set the date, time and location of the hearing, and

(d) give notice of hearing to the parties if the appeal is under the *Forest and Range Practices Act*, or serve notice of hearing on the parties if the appeal is under the *Forest Act* or *Range Act*.

(2) and (3) Repealed. [B.C. Reg. 525/2004, s. (c).]

[am. B.C. Reg. 525/2004, s. (c).]

Panel chair determined

22 For an appeal to be considered by a panel of the commission, the panel chair is determined as follows:

(a) if the chair of the commission is on the panel, he or she is the panel chair;

(b) if the chair of the commission is not on the panel but a vice chair of the commission is, the vice chair is the panel chair;

(c) if neither the chair nor a vice chair of the commission is on the panel, the commission must designate one of the panel members to be the panel chair.

Additional parties to an appeal

23 (1) If the board is added as a party to an appeal under section 131 (7) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

(2) If a party is added to the appeal under section 131 (8) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

Intervenors

24 (1) If an intervenor is invited or permitted to take part in the hearing of an appeal under section 131 (13) of the *Forest Practices Code of British Columbia Act*, the

commission must give the intervenor a written notice specifying the extent to which the intervenor will be permitted to take part.

(2) Promptly after giving notice under subsection (1), the commission must give the parties to the appeal notice

(a) stating that the intervenor has been invited or permitted under section 131 (13) of the *Forest Practices Code of British Columbia Act* to take part in the hearing, and

(b) specifying the extent to which the intervenor will be permitted to participate.

Transcripts

25 On application to the commission, a transcript of any proceedings before the commission or the panel of the commission must be prepared at the cost of the person requesting it or, if there is more than one applicant for the transcript, proportionately by all of the applicants.

Prescribed period for an appeal under the *Forest Act*

26 The prescribed period for the purposes of section 149.1 (3) of the *Forest Act* is 42 days after conclusion of the hearing.

Part 4

ANNUAL REPORT OF FOREST APPEALS COMMISSION

Content

27 (1) By April 30 of each year, the chair of the commission must submit the annual report for the immediately preceding calendar year required by section 197 (2) of the *Forest Practices Code of British Columbia Act*.

(2) The annual report referred to in subsection (1) must contain

(a) the number of appeals initiated under the *Forest Act*, the *Range Act* or the *Forest and Range Practices Act*, during the year,

(b) the number of appeals completed under the *Forest Act*, the *Range Act*, or the *Forest and Range Practices Act*, during the year,

(c) the resources used in hearing the appeals,

(d) a summary of the results of the appeals completed during the year,

(e) the annual evaluation referred to in section 197 (1) (b) of the *Forest Practices Code of British Columbia Act*, and

(f) any recommendations referred to in section 197 (1) (c) of the *Forest Practices Code of British Columbia Act*.

Part 5

TRANSITION

Section Repealed

28 Repealed. [B.C. Reg. 525/2004, s. (c).]

The following section of the *Private Managed Forest Land Act* came into force on August 3, 2004.

Private Managed Forest Land Act

Part 4

COMPLIANCE AND ENFORCMENT

Division 2 – Administrative Remedies

Appeal to Commission

33 (1) A person who is the subject of an order, a decision or a determination of the council under section 26 (1), 27 (1) and (2), 30, 31 (1) or 32 may appeal the order, decision or determination to the commission in accordance with the regulations.

(2) An order, a decision or a determination that may be appealed under this section, other than a stop work order, is stayed until the person who is the subject of the order, decision or determination has no further right to have the order, decision or determination appealed.

(3) The commission must conduct an appeal in accordance with this section and the regulations.

(4) The appellant and the council are parties to the appeal and may be represented by counsel.

(5) At any stage of an appeal, the commission or a member of it may direct that a person who may be directly affected by the appeal be added as a party to the appeal.

(6) The commission may invite or permit any person who may be materially affected by the outcome of an appeal to take part in the appeal as an intervenor in the manner and to the extent permitted or ordered by the commission.

(7) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(8) If the appellant does not deliver a written submission ordered under subsection (7) within the time specified in the order or the regulations, the commission may dismiss the appeal.

(9) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party or any intervenor and an opportunity to rebut the written submissions.

(10) The commission or a member of it may make an interim order in an appeal.

(11) Hearings of the commission are open to the public.

(12) The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

(13) The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in the person's custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(14) The commission may retain, call and hear an expert witness.

(15) An appeal under this section to the commission is a new hearing and at the conclusion of the hearing, the commission may

(a) by order, confirm, vary or rescind the order, decision or determination,

(b) refer the matter back to the council or authorized person for reconsideration with or without directions,

(c) order that a party or intervenor pay another party or intervenor any or all of the actual costs in respect of the appeal, or

(d) make any other order the commission considers appropriate.

(16) An order under subsection (15) that is filed in the court registry has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if the order were an order of the court.

Private Managed Forest Land Regulation (B.C. Reg. 371/04)

Notice of appeal

9 (1) A person who, under section 33 (1) of the Act, may appeal an order, decision or determination to the commission must submit a notice of appeal to the commission that is signed by, or on behalf of, the appellant and contains all of the following:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for service of the appellant;

(c) the grounds for appeal;

(d) the relief requested.

(2) The appellant must deliver the notice of appeal to the commission not later than 3 weeks after the later of the date of

(a) the decision of the council under section 32 (2) of the Act, and

(b) the order, decision or determination referred to in section 33 (1) of the Act.

(3) Before or after the time limit in subsection (2) expires, the commission may extend it.

(4) A person who does not deliver a notice of appeal within the time specified loses the right to an appeal.

Deficient notice of appeal

10 (1) If a notice of appeal does not comply with section 9 the commission may deliver a written notice of deficiencies to the appellant, inviting the appellant, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the commission delivers a notice under subsection (1), the appeal may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, and

(b) the submission to the commission of further material remedying the deficiencies.

BRITISH COLUMBIA

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